

## General Terms and Conditions of Supply



These terms apply between Nabishi UK Ltd and where appropriate its subsidiary ("Nabishi") and the Customer ("Customer") who orders products and software ("Equipment") from Nabishi.

### 1. Effect

These terms, with any special conditions specified by Nabishi, shall prevail over all others proposed by the Customer. Nabishi's failure to object to other terms and conditions shall not be regarded as a waiver of this requirement. No modification of these terms will be binding on Nabishi unless made in writing and signed by an authorised officer of Nabishi. All customer orders are subject to written acceptance by Nabishi.

### 2. Prices

- 2.1. Unless otherwise stated, prices quoted are for ex-works and free of delivery.
- 2.2. Prices for Equipment and Services are exclusive of any taxes, charges or duties (if any) chargeable within or outside the United Kingdom. The Customer agrees to reimburse Nabishi where Nabishi pays the same or is responsible for payment of all such taxes including penalties. Prices are inclusive of packing to full normal export standards.
- 2.3. If the Customer asks Nabishi to vary quantities, delivery dates or Equipment specifications from those against which prices were quoted Nabishi shall have the right to adjust the quoted price.

### 3. Payment

- 3.1. Unless other payment terms have been agreed full payment of the Contract Prices shall be due on delivery or deemed delivery in accordance with clause 4.3, in accordance with the payment arrangements agreed between Nabishi and the Customer for the Contract.
- 3.2. Separate invoice(s) may be submitted in respect of any installation and commissioning or supervision charges for payment at the end of the calendar month in which the invoice is dated.
- 3.3. No payment may be withheld by the Customer by way of set off (legal equitable or otherwise) against any sums that may become due to the Customer.
- 3.4. Any sums payable to Nabishi that are ten days or more overdue shall bear penalty interest on a day to day basis of 2% per month from the due date until the date of payment and monies received by Nabishi may be applied by Nabishi at its option against such interest prior to application against other monies due from the Customer.



### 4. Delivery

- 4.1. Quoted delivery periods are calculated from the last to occur of:
- Nabishi's acceptance of the Customer's order; or
  - provision by the Customer to Nabishi of all engineering and configuration details and Customer supplied parts and materials necessary to enable Nabishi to manufacture and supply the Equipment; or
  - receipt of any necessary letter of credit, in the agreed form or a form acceptable to Nabishi, and other required documentation (including any confirmation or guarantee); or
  - approval by the relevant authorities and confirmation of the availability of export licences should these be required; or
  - approval by the competent Authorities in the Customer's country (and the country of installation of the Equipment if different) that all necessary import licences, permits and foreign exchange approvals have been obtained and will remain valid throughout the performance of the Contract.
- 4.2. Nabishi will endeavour to deliver Equipment and complete installation and commissioning within quoted target dates but (and without prejudice to Nabishi's rights for breach) quoted dates for delivery, installation and commissioning may be automatically extended by Nabishi if the Customer delays in meeting its obligations or the Customer requires and Nabishi accepts a change in quantities or specification of the Equipment.
- 4.3. The Customer shall indemnify Nabishi for all losses and costs incurred by Nabishi if the Customer refuses or fails to accept delivery of the Equipment including storage charges incurred by Nabishi with any third party warehouse. In those circumstances delivery to a warehouse shall be deemed to be completed delivery by Nabishi.

### 5. Equipment Specification and Quality

- 5.1. Nabishi reserves the right to amend details of the technical specification for the Equipment in the Contract to improve the facilities or performance of the Equipment supplied or to substitute items of equivalent performance where items referred to in a quotation are no longer available.
- 5.2. All specifications, particulars and descriptions set out in catalogues, brochures and similar documents, shipping specifications and particulars of weight and dimension are approximate and being intended for general guidance and shall not be binding. The Customer accepts responsibility for the Equipment achieving the Customer's intended results and for the selection of results obtained from any other Equipment or software with which the Equipment supplied is to be used.



### 6. Inspection and Testing

- 6.1. The Equipment will be submitted to Nabishi's standard tests before despatch. If the Customer wishes to attend these tests he shall inform Nabishi at the time the Equipment is ordered. In the event of delay on the Customer's part in attending beyond seven days from written notice given by Nabishi that Nabishi is ready, Nabishi will proceed with the tests in the Customer's absence and the tests shall be deemed to have been made in his presence.
- 6.2. Any additional tests of the Equipment, which may be required by the Customer, must be agreed separately in writing and these tests may then be the subject of extra charges and extra time for performance of such tests.

### 7. Risk and Title

- 7.1. Risk of damage to or loss of the Equipment shall pass to the Customer on delivery to the Customer's nominated carrier.
- 7.2. Title of hardware shall pass once Nabishi has received full payment for the relevant hardware and all other equipment supplied by Nabishi to the Customer; however title to software, and the media on which it is embodied, together with copyright and other intellectual and industrial property rights in the software and in all data and information embodied in the hardware, shall at all times remain with Nabishi or its licensors. The rights of the Customer in software not produced by Nabishi but included in the Equipment may be subject to the Customer accepting conditions of sub-licence required by the owner of such software.
- 7.3. No claim for shortage or damage in respect of Equipment delivered will be considered unless received in writing by Nabishi within thirty days from the date of delivery of the Equipment to the Customer (or to a third party on the Customer's behalf, whichever first occurs).

### 8. Customer's Obligations

- 8.1. The Customer shall when required, supply Nabishi with such information and documents that are reasonably required to enable Nabishi to proceed with and complete the Contract without delay or interruption and shall indemnify Nabishi for any additional costs or expenses incurred by Nabishi as a result of delay or interruption caused through a failure of the Customer to supply all such information and documents in a timely manner.
- 8.2. Subject to the terms of Nabishi's Support Agreement (if entered into by the Customer) the Customer will be responsible for the installation, operation and maintenance of the Equipment.
- 8.3. From and after installation the Customer agrees that it is responsible for primary power source, PABX and PSTN connections or lines, RF (Radio Frequency) coverage performance, the provision of suitable intersite links, suitable antennae, multiplexing Equipment, and further installation of the Equipment at the Sites to which the Equipment is to be used.



### 9. Warranty

- 9.1. Nabishi undertakes to replace or (at its option) repair any hardware items proved to its reasonable satisfaction to have failed within twelve months of delivery by reason of faulty design, materials or workmanship Provided that:
- a. The warranty shall not extend to any failure not reported to Nabishi within 30 days of delivery by Nabishi where such failure ought reasonably to have been discovered within said 30 days or where the Customer does not promptly inform Nabishi on discovery of the alleged failures and thereafter promptly returns the hardware items carriage paid with a full written report on the defects;
  - b. The Customer shall refund to Nabishi the cost to Nabishi of any replacement, repair or redelivery of the hardware items effected by Nabishi where the failure is not within the terms of this warranty.
  - c. The warranty shall not extend to any failure where the Equipment has not been stored, installed, maintained and used properly having regard in particular to Nabishi and (if any) other agreed applicable specifications and instructions; or where the Equipment has not been used in accordance with interference-free power, suitable environment (including but not limited to free from electronic or radio interference and pests) and correct maintenance of the Products; or where the Customer has not installed engineering changes or enhancements to the Equipment on Nabishi's advice; or where the Customer has breached the terms of this agreement.
  - d. The warranty does not cover fair wear and tear, abuse, correction or repairs or modifications made other than by Nabishi or any repairs required due to events beyond the control of Nabishi;
- 9.2. In cases where Nabishi authorises the Customer to undertake warranty repairs, Nabishi will replace faulty components free of charge. No reimbursement will be made in respect of labour.
10. Limitation of Nabishi liability (Important: Please Read Carefully)
- 10.1. To the maximum extent permitted by law, the parties agree that all terms implied by law including any warranty or condition as to the fitness for any particular purpose of the Equipment are hereby excluded.
- 10.2. The Customer acknowledges that it uses the Equipment for business purposes and therefore agrees that all consumer protection terms implied by law shall not apply.
- 10.3. The Customer warrants that it has not relied on any representation made by Nabishi which has not been stated expressly in this Agreement or upon any catalogues or publicity material produced by Nabishi and no statement made or agreed and no liability undertaken orally shall be binding upon Nabishi unless confirmed by Nabishi in writing.
- 10.4. The Equipment is not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; intrinsically safe environments or in the design, construction, operation or maintenance of any nuclear facility. Nabishi disclaims any express or implied warranty of fitness for such uses. The Customer will not use or resell Products for such purposes.



- 10.5. The Customer acknowledges that any software supplied cannot be tested in every possible permutation and accordingly Nabishi does not warrant that software supplied will be free of all defects or that its use will be uninterrupted.
- 10.6. Neither party will be liable for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data or other economic advantage), however it arises, whether for breach or in tort, equity or otherwise, even if that party has been previously advised of the possibility of such damage.
- 10.7. Notwithstanding anything herein Nabishi's liability to the other for claims relating to this Agreement, whether for breach or in tort or otherwise, shall be limited to the amount paid by Customer for the Equipment which is within the 12 month warranty period and the subject matter of the claims.

### **11. Intellectual Property Warranty**

- 11.1. Because of the complexity of manufacturing techniques for electronic components and of the intellectual property rights pertaining thereto, Nabishi is unable to declare that the Equipment does not infringe the intellectual property rights of third parties. In the event that a third party makes a claim alleging that the Equipment infringes such third party's intellectual property rights Nabishi undertakes at its option and expense to defend the claim or seek a compromise. If an unfavourable judgement is rendered against Nabishi, Nabishi shall at its option take out a licence from the said third party or shall modify the Equipment in such way as to avoid infringement or replace the components or software with components or software of equivalent quality, functionality and performance. If such solution shall be impractical for economic and / or technical reasons Nabishi shall accept the return of the Equipment and refund to the Customer the Customer's net book value for the Equipment deemed to infringe.
- 11.2. Nabishi's obligations under clause 11.1 shall only apply if the Customer promptly notifies Nabishi, permits Nabishi through its counsel to defend and if appropriate settle the claim at Nabishi's expense, gives Nabishi all available information, assistance and authority to enable Nabishi to defend or settle the claim at Nabishi's expense and has not settled or compromised such claim.
- 11.3. Nabishi's obligations under clause 11.1 shall not apply if Nabishi has followed a design or instruction furnished or given by the Customer or the Equipment has been modified without Nabishi's approval or used in a manner or for a purpose or in a country not specified by or disclosed to Nabishi prior to the Contract Date or the Equipment has been used in association with software or equipment not supplied by Nabishi.
- 11.4. Clause 11 states the entire liability of Nabishi and the exclusive remedies for the Customer for claims of infringement of third party intellectual property rights..
12. Copyright Intellectual Property and Confidentiality
- 12.1. Copyright in all Nabishi documents (including drawings and software) furnished to the Customer for the purposes of the Contract shall at all times remain vested in Nabishi or its licensors and neither the documents nor their contents shall be



copied, reproduced or used for any purpose other than that for which they are furnished.

12.2. Data and information embodied in such documents, drawings and software or in firmware shall be held in confidence by the Customer and shall not be disclosed to third parties nor used for any purpose other than operation and maintenance of the Equipment.

12.3. The Customer shall take all reasonable measures to protect confidentiality and will not cause or permit anything which may damage or endanger Nabishi's goodwill, trade marks and intellectual property in the Equipment.

12.4. The Customer acknowledges that Nabishi's intellectual property in the Equipment is unique and extraordinary and the Customer hereby agrees that the loss thereof cannot adequately be compensated by damages and that without limiting Nabishi's remedies Nabishi shall be entitled to injunctive relief to enforce the provisions applicable to this Agreement.

### 13. Software

13.1. Nabishi hereby grants at no additional charge to the Customer a limited non transferable and non-exclusive multi-site licence to:

- a. use the Software (excluding source code) (whether embedded or installed in the Equipment) solely in conjunction with the Equipment during the useful life of such Equipment, as they may be repaired or modified, from time to time.;
- b. modify the Software only with the approval of Nabishi provided that all such modifications shall remain the property of Nabishi subject to the provisions of this Agreement.

13.2. The Customer undertakes throughout the term of this Agreement and after termination of this Agreement to not copy, (other than for back up or purposes authorised by Nabishi) alter, reverse engineer, modify, enhance, compile, disassemble, licence, sub-licence, lease, sell, assign or reproduce any software, (whether in whole or in part) supplied under this Agreement and to not write or develop any derivative software or any other software programs based upon the Software.

### 14. Territorial Restrictions

14.1. The Customer shall not without the express written approval of Nabishi (which shall not be unreasonably withheld) export or use the Equipment, or sell or hire it to a person who to his knowledge intends to export or use it, outside the country of intended use as declared to Nabishi. The customer undertakes to comply with United States re-export control restrictions where applicable.

14.2. If export or import restrictions are imposed or export or import licences are cancelled, withdrawn or not renewed, then the Customer shall pay for all goods and services already delivered at the contract rate and payments already made may be used by Nabishi in respect of claims or demands made or losses incurred under or in connection with the Contract.



### 15. **Survival**

The provisions of this clause 10, 12, 13 & 14 shall survive termination of the Contract and extend to all media in which data and information may be stored or displayed.

### 16. **Force Majeure**

Nabishi shall not be liable for any delay, failure or non-performance of any of its obligations under this contract resulting from war, armed conflict, civil disturbance, Act of God, fire, explosion, accident, industrial dispute or any regulation, rule or act of any Government or Governmental agency, failure of third party suppliers to deliver parts and components, or any other cause beyond Nabishi's reasonable control.

### 17. **Default and Termination**

If the Customer breaks any provision of this or any other contract with Nabishi, (and such breach is not remedied within 30 days of notice of the breach by Nabishi to the Customer) or suffers distress or execution on the equipment, or commits an act of bankruptcy, makes arrangements with creditors or goes into liquidation or receivership (except for amalgamation or reconstruction), ceases or threatens to cease trading, Nabishi may (without affecting any other claim or remedy) suspend performance or terminate this or any other contract between Nabishi and the Customer by written notice and shall be entitled to be paid for goods already delivered, and work-in-progress (including software generated but not supplied), at a rate reasonably based on the Contract Price.

### 18. **General Terms**

- 18.1. The Contract shall be governed by English Law and subject to the exclusive jurisdiction of the English Law Courts provided Nabishi may enforce this agreement in the Customer's jurisdiction or in any other jurisdiction the Customer breaches these terms and conditions in and in either such case, Nabishi may elect to enforce this agreement in accordance with the law of that jurisdiction.
- 18.2. Severability. In the event that any part or parts of this Agreement shall be held illegal or null and void by any Court or administrative body of competent jurisdiction, such determination shall not affect the remaining parts of this Agreement which shall remain in full force and effect as if such part or parts held to be illegal or void had not been included in this Agreement.
- 18.3. No waiver by Nabishi, whether expressed or implied, of any provision of these terms and conditions or of any breach or default thereof by the Customer shall constitute a continuing waiver of such provision or waiver of any term nor shall acceptance of payments by Nabishi be deemed a waiver of any breach by the Customer.
- 18.4. Nothing herein contained shall be construed to constitute the parties hereto as partners or joint ventures or the agent of the other Party in any sense of these terms whatsoever, and no Party may act for or bind an other Party in any dealings with a third party.

